



child rights connect
formerly the ngo group for the crc

STATE PARTY EXAMINATION OF GERMANY'S THIRD AND FOURTH PERIODIC REPORTS

65TH SESSION OF THE COMMITTEE ON THE RIGHTS OF THE CHILD

13 JANUARY – 31 JANUARY 2014

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Germany ratified the Convention on the Rights of the Child (CRC) on 6 March 1992. On 27 and 28 January 2014, the Committee on the Rights of the Child (the Committee) examined the third and fourth periodic reports of Germany. It was last examined on 16 January 2004. Germany ratified the Optional Protocol on the Involvement of Children in Armed Conflict (OPAC) on the 13 December 2014.

Opening Comments

The delegation of Germany was led by Mr. Ralf Kleindiek, Secretary of State, from the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth. He was supported by representatives from the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, the Federal Ministry of Justice, the Federal Ministry of Defence, the Federal Foreign Office, the Federal Ministry of the Interior, the Federal Ministry of Labour and Social Affairs, the Federal Ministry of Education and Research and the Standing Conference of the Ministers of Education and Cultural Affairs of the Länder in the Federal Republic of Germany.

Mr. Ralf Kleindiek thanked the Committee for the invitation and declared that it was a great pleasure to discuss the national implementation of the CRC. He underlined that the reporting procedure was a very useful tool for the government. Mr. Kleindiek declared that children and youths were at the centre of national policies. He noted that the State Party was in the right direction and emphasised the ratification in February 2013 of the Third Optional Protocol to the CRC on a Communications Procedure. He pointed out that the State Party had

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been the first European country to ratify it and that it would now enter into force on the 14 April 2014.

Mr. Kleindiek recognised the importance of dissemination and awareness raising about child rights. He explained that the government had financed numerous events, such as the 20th anniversary of the ratification of the CRC. He presented key improvements for the protection of children, such as the round table on sexual abuse and the creation of the post of Independent Commissioner on Child Abuse. Mr. Kleindiek also mentioned the Federal Child Protection Act of the 5 January 2012, which had been adopted following extensive consultation. He highlighted this law as an important preventive and protection measure.

Mr. Cardona Llorens, the Coordinator of the Task Force, extended a warm welcome to the delegation and said he was grateful for the statement made by the delegation. He clarified that the session would not be an exam or a trial but rather a constructive dialogue. He noted that many of the last Concluding Observations from the Committee had been taken into considerations.

General Measures of Implementation

Legislation

The Committee welcomed the institutional and legislative measures that had been taken, in particular the Federal Child Protection Act of the 5 January 2012. It also welcomed the withdrawal of the reservations to the CRC as well as the ratification of the Third Optional Protocol to the CRC on a Communications Procedure. The Committee noted the dualist legal system in the State Party and asked if the CRC had been transposed into domestic law. It also noticed that the rights of the child had been transposed in all the legislation of the Länders, with the exception of Hesse and Hamburg. The Committee expressed a general concern for the lack of harmonisation of Länders' legislations. The delegation answered that the CRC had been incorporated into the federal law and all State agencies were due to implement it. The delegation finally added that in 2013 the newly established government had undertaken a series of consultations with different political parties and the outcome of this process had been a Coalition Agreement that would set out the priority areas for future policies and programmes.

Coordination and monitoring

The Committee asked about the outcome of the National Action Plan for Children's Rights. It underlined that, despite its previous recommendations, nothing had been done to create one central coordinating mechanism. The delegation answered that the National Action Plan of 2005-2010 had resulted in the development of an independent Youth Policy by the new government. It explained that the choice had been made to maintain the current system of coordination and that before any changes were made the situation had to be studied. The delegation acknowledged that with the three levels of administration it was not always easy to coordinate. It nonetheless underlined that any central coordination mechanism would always meet with the limits of the autonomous competencies of the Länders and Municipalities. The delegation understood the criticism but emphasised that the federal structure was a result of the Second World War and that it was still deemed appropriate.

The Committee asked if there was a plan to establish a National Human Rights Institution and if it would be mandated to monitor the implementation of the CRC, as well as to receive complaints. It underlined that, according to the Third Optional Protocol to the CRC on a Communications Procedure, domestic remedies had to be exhausted before the complaints could be considered by the Committee. In light of this, it recommended that the complaint

system should be nationwide. It further asked if the local institutions which received the complaints fulfilled the Paris Principles. The delegation responded that complaints were dealt with more effectively at a local level. It assured that there were complaint mechanisms in all Länders that had mediating functions and could recommend children to take their cases to court. It added that their form varied from Länder to Länder and in certain cases it was not compliant with the Paris Principles. However, the delegation emphasised that this was not problematic since complaints were referred to an independent judiciary.

Dissemination and training

The Committee expressed concern about the lack of knowledge of the CRC by children. The delegation explained that the CRC was part of school curricula but that more efforts needed to be done.

Data

The Committee pointed out that the data provided in the State report was insufficient and incomplete. It asked if there were any plans to have a comprehensive data collection system. The delegation recognised that this was a deficiency and that disaggregated data was not available. It explained that a draft Act aimed at improving statistics was before Parliament.

Budget

The Committee noted that the State Party had a target of allocating 0,7 per cent of its GDP for development aid and asked if this had been achieved. The delegation answered that the State Party supported development aid in order to help children abroad. It gave the example of polio vaccination campaigns that the State Party had supported in developing countries. The delegation declared that 0,7 per cent of the GDP remained the target for the new government.

Cooperation with civil society

The Committee asked if civil society had been involved in the preparation of the report as well as children. The delegation answered that consultations with civil society organisations had been conducted and that financial support had been provided for the separate children's report. It also explained that for the establishment of the Youth Policy, children and youth had been involved during the one and a half year development.

Definition of the Child

The Committee noted that Article 6 of the Basic Law for the Federal Republic of Germany concerned children and pointed out that children were not clearly defined as subjects of law. The Committee took notice of the decision of the Constitutional Court which recognised the best interest of the child but insisted that it was important to fix child rights in the Basic Law. The delegation said that if the Basic Law was to be modified this would be taken into account. It emphasised that children had their own subjective rights provided in the Basic Law and that human rights would always be taken into account.

General Principles

Non – discrimination

The Committee welcomed the fact that freedom of religion and tolerance were provided by the Federal law. It asked further information about the number of hate crimes that had targeted vulnerable groups. The Committee asked what could be the causes for intolerance and encouraged the State party to promote a culture of peace. The delegation responded that

hate crimes were prosecuted and that specific penalties with higher sanctions were being envisaged.

Right to identity

The Committee asked what happened to children born from non-German surrogate mothers in the State Party. It noted that these children could become stateless and asked how they would be registered. The delegation answered that the use of surrogate mothers was not allowed in the State Party. It acknowledged that such a possibility could arise and in that case the child would receive the nationality of the mother. If the mother was stateless, the child could acquire German nationality after five years.

Best interests of the child

The Committee noted that emphasis was given in legislation to the notion of welfare of the child rather than the notion of best interest of the child. It highlighted the difference between the two concepts and asked if the best interest of the child would be incorporated into Federal law. The delegation answered that the notion of welfare was outdated and could be updated.

The Committee noted the political role of the State Party in the European Union and asked if there had been specific guaranties to ensure that deficit reduction measures imposed to certain countries would not affect the rights of the child. The delegation responded that the concerned governments had been requested not to harm the rights of the child.

Birth registration

The Committee commended the achievements made on the rights to identity and nationality. It noted significant delays in birth registration of children whose father was unknown. The Committee asked what happened to those children and if they had access to all basic services, even without a certificate. The delegation responded that children received a certificate in which it was mentioned that the father was unknown.

Respect for the views of the child

The Committee noted the existence of about 400 intersexual children and asked if their views had to be heard before any irreversible medical intervention. The delegation acknowledged the situation and explained that the question was being discussed. It added that the main concern was to ensure the best interest of the child.

Right to life, survival and development

The Committee underlined that the State Party was the largest economy in Europe. However, 1 out of 6 children was at risk of falling into poverty. It noted that these children tended to be from families with a single parent, with more than three children or from families with a minority background. The Committee asked what measures had been taken and what had been done since the 2010 judgment on benefits. The delegation recognised that poverty was an issue in the State Party even though the country was prosperous. It outlined the measures taken by the new government, such as the introduction of a minimum federal wage and equal pay. It further explained that the Constitutional Court in its 2010 judgement had ruled that poor children should be supported in order to be able to participate. The delegation also declared that there would be financial relief provided to families and to local authorities. It added that the extent of benefits would depend on the income of the family. The delegation concluded that there currently was a complaint on this matter being judged by the Constitutional Court but that it was expected to fail.

Civil Rights and Freedoms

Corporal punishment and child abuse

The Committee took note of the federal law which prohibited the use of violence against children and asked whether the law had been implemented. It also asked about harassment in schools and if strategies had been put in place. The delegation answered that, in regard to corporal punishment children, parents and experts had been involved in awareness raising initiatives. It explained that the law was accepted in Court practice with cases being filed which indicated that there was a greater acknowledgement of interfamily violence. The delegation recognised that there was a problem with statistics for cases of corporal injury that did not specify the age group.

The Committee asked for more information about the reported cases of sexual abuse involving members of the clergy. It noted that in 2010 94 cases had been reported but only 30 were investigated. The delegation stated that cases of child abuse in churches had been a great concern for the last five years. It explained that concrete measures had been taken with the relevant views of non-governmental organisations taken into consideration. The delegation stated that the churches had been cooperative with local authorities.

It added that a compensation fund of 50 million EUR for victims of sexual abuse in institutions and homes had been created with a supplementary 160 million EUR set aside for cases related to abuse in East-Germany. Compensation covered medical support and specific contact points, such as psychologists, for victims. It also mentioned the establishment of an Ombudsman for cases of sexual abuse of children as well as the elimination of the statute of limitations for such crimes. It however acknowledged that for very old cases of abuse nothing could be done legally because many perpetrators had died.

The Committee what had been done in relation to the case of children with difficult behaviour who had been sent to Portugal to be re-educated by private associations and where they had been abused.

Access to appropriate information

The Committee asked how the government ensured that children were not exposed to risks through electronic media. It noted the roundtable on the protection of youth and asked if its conclusions would be integrated in legislation. The delegation answered that the government was aiming to do more for children and parents by making the digital world fully responsible. It gave the example of sanctions for cyber mobbing and the current work on legal regulations. The delegation further added that in 2014 a workshop on cyber mobbing would be organised in Berlin.

Family Environment and Alternative Care

Parental responsibility

The Committee asked if the State Party had considered removing the notion of custody and adopting the one of parental responsibility. The delegation agreed that the terminology could be changed.

Institutions and family-based care

The Committee expressed concern about the significant increase of children taken away from their families and placed in institutional care. It asked why this was happening and if it was due to inappropriate support such as language barrier when dealing with immigrant families. The delegation answered that the increase was caused partly by the number of unaccompanied minors, which had gone from 600 in 1995 to 6000 in 2013. The delegation

also explained the increase by the growing sensitivity amongst State agencies about the best interest of the child. It further underlined that the sharp increase between 2006 and 2010 of children placed into care was due to cases of immediate danger for the child or because of the child's personal request to enter the institution. The delegation finally explained that the Coalition Agreement would provide major financial allocations of 6 billion € to help local authorities improve their capacities and lower the level of institutionalisation.

The Committee asked about baby boxes and recalled a statement made by the previous government against their use. It noted that in 2010 the Länder of Hamburg had decided to stop the setting up of new baby boxes and asked whether any regulation had been put in place. It also shared information that it had received that up to 25 per cent of children put in baby-boxes had vanished and might have been given for adoption.

The delegation responded that it had not received such information and that children could not have vanished, the case being more likely that their long term fate was unknown. It explained that the legislative framework was still the same but that the government's position had changed with the new Federal Ministry for Family Affairs, Senior Citizens, Women and Youth believing that baby boxes saved lives. The delegation added that counselling for mothers aimed to avoid abandonment with experience showing that often mothers who had abandoned their baby changed their minds and wanted their baby back. Taking this into consideration, the delegation explained that specific regulation existed in order to allow these mothers to claim their babies back if they required so, within 8 weeks from the date of the abandonment. It further stated that the authorities needed to assess the two conflicting interests of the mother and the child. The delegation pointed out that children had reached the age of 16 he had the right to access the information on their origins.

Child abduction

The Committee welcomed the ratification of the Convention on Action against Trafficking of Human Beings of the Council of Europe. It noted that the State Party was a platform for trafficked persons and asked about the possibility of obtaining residency for trafficked children. The delegation responded that under certain conditions trafficked children could receive a residence permit and that their best interest was implicitly always ensured.

Right to privacy

The Committee asked about the protection of information concerning children and how this was ensured in the media. The delegation answered that for institutions there were clear rules. It added that if there were violations, there were consequences in terms of labour law as well as sanctions for individuals.

Basic Health and Welfare

Children with disabilities

The Committee highlighted that there were no concrete statistics on children with disabilities and that it was reported that some parents, in particular refugees and immigrants, were reluctant to register their children. The delegation answered that it had statistics concerning youth with disabilities and had not heard of reluctance to register. It added that they could investigate this further.

Health services

The Committee asked about the access to health services of minorities, migrants and unemployed individuals. The delegation responded that legal regulations provided that all medical measures considered to be emergencies were available for refugees, though for regular services there could be a problem.

The Committee reported information it had received that 20 per cent of children were kept in adult wards. It also asked about the institutionalisation of children with Attention Deficit Disorder (ADD), with 38.500 children having been diagnosed. The Committee pointed out this was a high number and that up to 600.000 children were on medication which could lead to problems of addiction. The delegation answered that it did not have any information about the children sharing adult wards. It explained that problem of excessive medication had been recognised with federal research projects having been launched and the medical profession adjusting its rules.

The Committee asked about adolescent health issues such as substance abuse. It asked in particular about access to reproductive health. The delegation answered that substance consumption had been going down, though problems remained with alcopops. It explained there were public campaigns on sexual education and teenage pregnancies. The delegation further said that there was a special website targeting youth and providing anonymous help. It added that young girls could go to doctors without parental permission and with the assurance of the medical secret.

Environment

The Committee asked about coal power plants and the related environmental pollution due to emissions. It noted that there were 8.500 new cases per year of chronic bronchitis. The Committee underlined that the coal industry received 2.7 million € from the government and asked if there were any regulations to monitor the impact of commercial companies on children's rights. The delegation responded that more research on this subject needed to be done. It explained that there was an increasing awareness about health hazards in relation to specific groups of the population.

Breastfeeding

The Committee mentioned attachments disorders between mothers and their children and asked if there was a code on breastfeeding. The delegation answered that both privately and publicly there were special places and times for breastfeeding mothers. It added that in their work environment there was two half hours per day which needed to be provided when they worked for eight hours.

Harmful practices

The Committee underlined that 24.000 girls and women had suffered of FGM and that a high number was at risk. The delegation responded that it could not confirm or deny the number as there were no clear statistics. It added that FGM had been criminalised and better figures would soon be available.

Education, Leisure and Cultural Activities

Pre-school education

The Committee asked about early childhood care and noted that only 30 per cent of children under 3 were attending crèches. It queried if there were any plans to extend early childhood education. The delegation answered that major financial allocations were being given to local authorities in order to improve capacities.

Education

The Committee took note that the education system was not unified since it was an exclusive competence of the Länder. It underlined that children had difficulties to change from one Länder to another since requirements and levels varied. The Committee referred to the recommendations of the Special Rapporteur on the right to education on the three track

system. It pointed out that the system excluded children and that other options such as a fourth track could prevent differentiation.

The delegation answered that the education system was linked to Federalism and that standards had been set, greatly improving the situation. It explained that previously there was no possibility to follow primary and secondary education in the same school but that it was now possible to continue. Though it understood the criticism linked to the lack of standardisation, the delegation pointed out that the PISA study had shown that the State Party was above the international average. It added that switching to a gymnasium was not necessary and that intermediate schools existed, providing in some Länders equivalent or better education.

The Committee asked about the threshold to have access to school materials and noted that families who exceeded it could not have access to any support. It underlined that the mobility of children from poorer families was lower and that they tended to go mainly to technical schools rather than gymnasiums. The Committee acknowledged the plan to introduce all day school but emphasised that this was only useful if the education was of a high level. It further questioned the reported high pressure on children in the school system.

The delegation explained that 10 per cent of the federal budget was transferred to the Länders targeting all levels of schooling and infrastructure development. The delegation explained that there was a link between lower education for weaker segments of society and half day schooling which had pushed the Coalition Agreement to include a proposal for full-day tuition. It added that the duration of schooling varied from 12 to 13 years, depending on the Länders. It highlighted the regime of 12 years had caused stress to certain children.

Children with disabilities

The Committee expressed concern in relation to access to education for children with disabilities. It noted that 65 per cent of children with disabilities continued to follow special education and that there were discrepancies between Länders with some having a rate of inclusion of 6 per cent and others 50 per cent. The Committee pointed out that inclusion differed depending on the school year and decreased further into secondary education. It asked if the government envisaged keeping the dual education system or promoting inclusive education.

The delegation responded that the discussion had not concluded yet, though the ultimate objective was to have inclusive schooling. It underlined that there was a broad ranging social debate and both systems would continue. The delegation acknowledged that further training for teachers was needed.

Leisure time

The Committee asked if there was sufficient leisure time made available for children. It noted a tendency to regard children's play as a nuisance and playgrounds being closed after noise complaints. The delegation answered that efforts had been made to ensure that noise made by children would not be considered under the noise emission law thus preventing closures. It further explained that there was the possibility for school playgrounds to remain open after school hours, though this was not a uniform measure.

Special Protection Measures

Juvenile justice

The Committee acknowledged that the juvenile justice system in the State Party was good and included youth. Nonetheless, it pointed out the excessively high number of children in

conflict with the law from the age of 14, age of criminal responsibility. The Committee asked if there was any intention to raise the age of criminal responsibility and what measures had been taken to prevent criminal behaviour by juveniles. The delegation underlined that children in closed institutions were a difficult segment of the population. It explained that Länders had been dealing with the issue in different ways, including establishing intensive intervention units that would work to prevent criminal acts committed by children. The delegation emphasised that the State Party did not aim to incarcerate minors and that at the time being there was no intention to raise the age of criminal responsibility.

The Committee asked if it was possible for minors to be detained with young adults and if there were any plans to harmonise measures taken by Länders. The delegation answered that the Coalition was satisfied with the existing regulations and that there was no plan for harmonisation. It stated that it was prohibited for juveniles under 18 to be detained with young adults. The delegation also described its general system which entitled children to a subjective approach and gave them access to one to one services. It added that, during detention, education was provided with the possibility of prolonging the stay of convicted offenders for educational purposes. It also described the opportunity to obtain a high school diploma or undertake a vocational training in detention centres.

The Committee asked how children could file complaints. The delegation explained that, in accordance with the Criminal Procedural Code, the police could receive and process complaints and assist the public prosecutor. It further added that children could go to the police without a custodian, this being relevant for cases where the parents had committed the violation. It finally said that children needed a legal representative to go to court.

Protection of child witnesses and victims

The Committee asked if emergency help lines existed nationwide and if children were aware of their existence. It also asked who was running the help lines and if they were sufficiently financed. The delegation answered that an emergency telephone line existed and that it was run by the association Nummer gegen Kummer. It added that the number was accessible nationwide through the internet and was publicised in institutions, schools and other settings for adolescents. The delegation underlined that children should know how to have access to this number. It further said that it would verify the reported lack of funding.

The Committee asked how victims of abuse were dealt with. The delegation responded that attempts had been made to ensure that the judicial process would not be a burden on children. It explained that the judicial proceedings had to balance the interest of the victims and the right to a fair trial of the accused. It added that children were only interviewed by trained officials and following specific rules. Children were also provided with free legal aid and support throughout the court proceeding. If they attended a hearing in court the latter would be held behind closed doors.

Asylum-seeking children

The Committee expressed concern about the Asylum Procedural Act, according to which, children between the ages of 16 and 18 did not receive the same support as below 16s. It asked if this age group would be considered as children and if it still had access to legal counselling. The delegation explained that children between 16 and 18 years old could file an asylum application independently and received the same support available to under-16s. In particular, the youth office would always appoint a guardian for them and they were also entitled to free legal aid. However, the delegation informed the Committee that the government intended to eliminate this differentiation.

The Committee asked about the accelerated asylum procedures at the border and if authorities were sufficiently trained. The delegation responded that the procedure at the airport was simplified and accelerated for particular cases with only specially trained personnel assigned to them. It added that it was only necessary for a very limited number of cases and that child friendly places existed in the airports. It further explained that if unaccompanied minors crossed the border, youth officers and counsellors had to be present to deal with them.

The Committee took note of the backlog of asylum applications and asked if these cases were prioritised. It also asked what happened if the child turned 18 during the lengthy application procedure. The delegation answered that deportation decisions were not linked to the age but to the legal situation of the asylum seeker. It added that the services provided for minors were maintained when they turned 18. The delegation further explained that the duration of the procedure was longer than for adults due to the additional safeguards and protection measures that existed for minors, such as the provision of counselling. It recognised that there was a dilemma but that the Government believed that the priority was to ensure better care while trying to reduce the length of the process.

The Committee asked about children with an irregular status and the impossibility of attending day care centres or schools due to the fear of being reported to the authorities. The delegation answered that the best interest of the child was upheld and thus the obligation to provide a residence certificate to schools had been removed.

Private companies

The Committee asked if the rights of the child were being upheld by private companies when they operated abroad. It highlighted the fact that numerous German companies had been accused of human rights violations, such as in the Democratic Republic of Congo. The Committee asked what measures had been taken to implement the Guidelines of the Organisation for Economic Co-operation and Development for Multinational Enterprises. The delegation responded that the State Party had signed the International Labour Office conventions and that there was an increased sensitivity as far as child labour was concerned. It gave the example of Hamburg, where the authorities decided that for public procurement only companies having committed not to resort to child labour could be selected. The delegation further added that the new government had declared that it would implement the UN Guiding Principles on Business and Human Rights.

Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (OPAC)

The Committee highlighted that the age of recruitment into the army remained at 17 and that last year 1.000 recruits of this age joined. It recommended that the age should be brought up and asked about the recruitment campaigns targeting minors. The Committee asked about arms control and measures taken to ensure that small arms would not be used by children. The delegation responded that the Federal government followed the principle of not exporting arms where violations of human rights were taking place.

Concluding Remarks

Mr. Cardona Llorens thanked the delegation for the constructive dialogue. He underlined that many efforts still needed to be done, especially in relation to data collection. He emphasised the opportunity represented by the new government as it could include the Committee's recommendations in the Coalition Agreement.

The delegation extended its thanks to the Committee and said that its advice would be brought back home. The delegation emphasised that achievements had been made but there remained more to be done. It committed to work on three main priorities: data collection and monitoring, coordination and the institution of a complaints mechanism. The delegation also said that the government intended to continue working on substantive issues such as child poverty, education and equality.